

CAPE COD NATIONAL SEASHORE

LAND PROTECTION PLAN

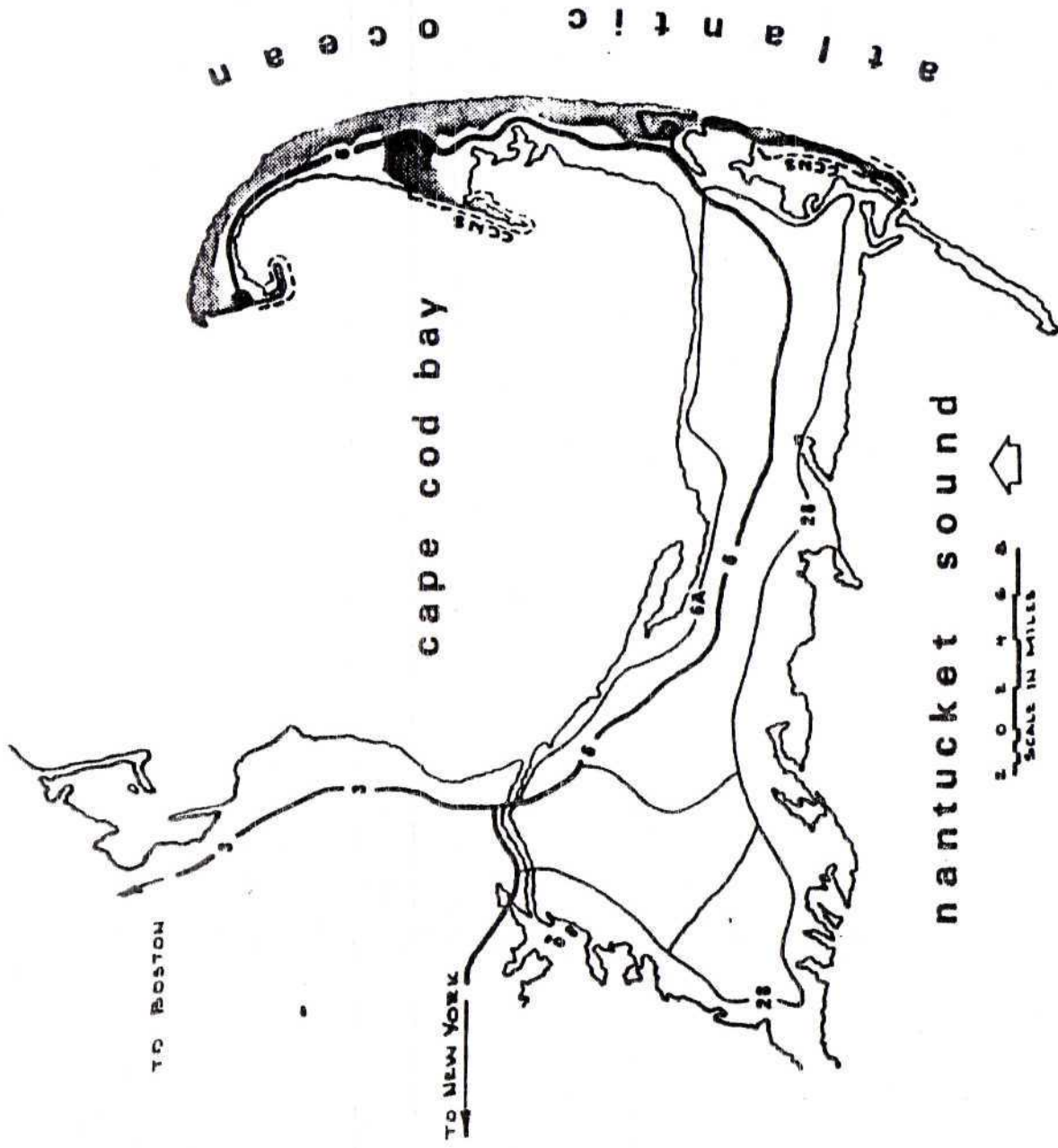
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LOCATION MAP



SUMMARY

This Land Protection Plan for Cape Cod National Seashore recommends that three privately-owned improved properties and nine undeveloped parcels with imminent development potential be purchased in fee as rapidly as possible; that easements be purchased on 18 improved properties and 14 undeveloped tracts to prevent subdivision and/or further development; that eight non-exempt properties and two other developed properties be purchased in fee as funds are available; and that the National Park Service seek two cooperative agreements to assure the preservation of significant natural resources. Some 584 tracts of private land are adequately protected by local zoning. Monitoring of the local zoning administration for the privately owned land within the Seashore will continue to assure that the zoning standards approved by the Secretary of Interior are not compromised.

State-owned lands within the boundary consist primarily of submerged lands extending one-quarter of a mile offshore and total some 11,930 acres. These tidal lands can be acquired only with the consent of the state. State management of these lands is consistent with the protection goals for both Seashore resources and users, and this plan does not propose to seek transfer of these lands to the Service.

Town-owned lands containing some 2612 acres are also legislatively exempted from acquisition without the concurrence of the affected town. It is probable that these lands will remain in town ownership with the exception of those parcels which may become the subject of exchange negotiations with the Seashore for park development or management purposes. Town lands are currently managed in harmony with Service objectives. However, monitoring of these lands will be required to assure that Seashore objectives are not diminished through adverse use or development of town lands.

Other Federal ownerships within the Seashore comprise approximately 147 acres and are held in custody by the Department of Defense and the U.S. Coast Guard. The Secretary is authorized to accept transfer without consideration when these lands are no longer required by those agencies. These uses are not inconsistent with Service objectives and are expected to continue.

Finally, the plan contains guidelines for the protection of the "improved property" status of single-family dwellings on which construction was begun prior to September 1, 1959.

CURRENT OWNERSHIP (Acres)

Federal - National Park Service	27,139
Other Federal Agencies	147
State - Submerged Lands	11,930
Local Governments	2,612
Private	<u>1,696</u>
Total	43,524 Acres

SUMMARY (Cont'd)

<u>NUMBER OF TRACTS REMAINING TO BE PROTECTED</u>	Parcels
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56

<u>METHODS OF PROTECTION PROPOSED</u>	Acres
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Fee acquisition by the National Park Service	29
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Less-than-fee acquisition by the National Park Service	169
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Cooperative Agreement	63
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Sub-Total 261 Ac.

Adequately Protected (No Action)	Acres
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National Park Service Land	27,139
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Other Federal	147
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State Owned	11,930
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Town Land	2,612
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Private Ways	180
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Developed Property	1,115
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Commercial Property	140
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Sub-Total 43,263 Ac.

<u>STATUTORY ACREAGE CEILING</u>	None
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The Act of August 7, 1961 described the area by metes and bounds. The Act of November 10, 1978 authorized addition of 13 acres and deletion of 16 acres.

FUNDING STATUS

Authorized acquisition ceiling	\$42,917,575
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Appropriated to date	\$42,917,575
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Obligated to date	\$42,917,575
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Unobligated balance	0
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LAND PROTECTION PLAN

CAPE COD NATIONAL SEASHORE

I. INTRODUCTION

A revised policy for the use of the Federal portion of the Land and Water Conservation Fund was adopted by the Department of the Interior and published in the Federal Register on May 7, 1982, Volume 47, No. 89, page 19784. This policy requires agencies of the Federal government using that fund to:

1. *Identify what land or interests in land need to be in Federal ownership to achieve management unit purposes consistent with public objectives in the unit.*
2. *Use to the maximum extent practical cost-effective alternatives to direct Federal purchase of private lands and, when acquisition is necessary, acquire or retain only the minimum interests necessary to meet management objectives.*
3. *Cooperate with landowners, other Federal agencies, State and local Governments, and the private sector to manage land for public use or protect it for resource conservation.*
4. *Formulate, or revise as necessary, plans for land acquisition and resource use or protection to assure that sociocultural impacts are considered and that the most outstanding areas are adequately managed.*

This Land Protection Plan for Cape Cod National Seashore has been prepared in response to that policy, and in accordance with implementing instructions adopted by the National Park Service and published in the Federal Register, Volume 48, No. 92, Wednesday, May 11, 1983, pages 21121-21130. It will examine alternative ways to manage and protect the lands within the authorized boundary with the intent of providing cost-effective land protection. Direct federal purchase will be only one of several protection techniques, and it will be used only where other methods of land protection are found insufficient to accomplish the purposes for which the Seashore was established. The plan is prepared in compliance with relevant legislation, executive orders, and Departmental and National Park Service Policies. Following approval, revisions or updates will be made, as necessary, to reflect changing conditions.

Land acquisition in all areas of the National Park System is executed in accordance with the provisions of applicable legislation; including Public Law 91-646, the Uniform Relocation Assistance and Real Property Assistance Act of 1970; the Land Acquisition Policy of the National Park Service; and Public Law 87-126, hereinafter "the Act," (16 U.S.C. § 459-b.), signed into law on August 7, 1961, which provided for the establishment of Cape Cod National Seashore. A copy of the Act is included in this plan as Appendix D.

The major issues to be addressed by the Land Protection Plan concern the remaining private and public lands within the Seashore boundary. Issues to be addressed in this plan include:

- National Park Service access to undeveloped land to provide for management of resources
- potential for residential development of unimproved private land
- exchange of Federal land for more important town or private property
- developed property exempt from "improved property" designation and protection from condemnation
- potential for subdivision of land suitable for private residential development
- public access for recreation uses
- use of town (six towns comprising the Seashore area) or other public land (Coast Guard, Department of Defense) involving uses incompatible with purposes of the area as established by Congress.

Two other factors to be considered in the development of the Land Protection Plan for Cape Cod National Seashore are recognition of (1) the constant erosion occurring on the ocean and bay frontage, and (2) the dynamic nature of the coastal barrier beach formation. It is important that the Land Protection Plan for Cape Cod National Seashore reflect these changing physical as well as social, political and economic conditions.

Guidelines for the protection of the "improved property" status of private single-family residences will be formally adopted. Compliance with the provisions of the guidelines will assure that replacement structures and alterations to or enlargement of existing dwellings will not jeopardize the eligibility of "improved property" for a Certificate of Suspension of Condemnation of Improved Property, as provided for in P.L. 87-126. These guidelines are included as Appendix B.

This plan does not constitute an offer to purchase or sell land, or interest in land, nor does it diminish the rights of non-federal landowners. It is intended to serve as a guide to the National Park Service land protection policies for the Seashore, subject to availability of funds and other constraints.

II. PURPOSE OF THE PARK AND RESOURCES TO BE PROTECTED

A. Seashore Purpose

Cape Cod National Seashore was established to preserve unique natural, historic and scientific features and to provide for public enjoyment, understanding and use by establishing trails, observation points, exhibits and services.

Provisions for administration, protection and development are included in Section 7 of the Act. Management of the Seashore is further defined and supported by the Act of August 24, 1916 (39 Stat. 535, 16 U.S.C. § 1), which provided for the establishment of the National Park Service. The approved Master Plan and Statement for Management provides the following management objectives relating to land resource issues:

- manage the Seashore's natural, historical and cultural resources in accordance with legislative mandates and National Park Service policies
- preserve the cultural, historical and archeological resources of Cape Cod National Seashore and provide for their understanding, appreciation and enjoyment
- provide facilities and opportunities for recreation uses consistent with resource protection objectives.
- protect all resources through use of appropriate land protection measures

B. Resource Description and Significance

Cape Cod National Seashore encompasses some 43,524 acres of land and water on the Outer Cape. The authorized boundary includes approximately 39 miles of outstanding ocean beach along the Outer Cape, as well as 6½ miles of beach fronting on Cape Cod Bay.

Significant landscape features include the extensive sandy ocean beaches backed by high dunes extending from Eastham to Provincetown. Geologic features include moraines, outwash plains, kettle holes, kames, pamet river valley, and beach deposits in the form of spits. Nearly eight square miles of dunes, some up to 90 feet high, are located in the Province Lands area. Fresh water kettle ponds ranging in size from ½ acre to more than 100 acres are scattered throughout the Seashore. Nauset Marsh, covering more than 1300 acres, provides a refuge for wildlife, fish, shellfish and other forms of wildlife and is one of the more significant natural resources within the Seashore area.

The Cape's landscape went through many physical changes due to human activities; overfarming and overgrazing were observed by Henry David Thoreau when he visited the Cape in the mid-19th century. The physical characteristics of the Cape led to many noteworthy events such as the selection of Eastham for the connection point for the French transatlantic telegraph cable and the construction in Wellfleet of Marconi's first American transatlantic wireless station. Other prominent man-made features include lighthouses of national architectural significance.

Thus, over time it has become impossible to separate the historic scene of Cape Cod from the natural setting since the influences of both have had an affect on each other - leaving us with the way that Cape Cod is today, a cultural landscape in a natural setting.

C. Legislative Authorities and Constraints

Section 2(a) of the Act gives the Secretary of Interior, hereinafter "the Secretary," authority to acquire by purchase, gift, condemnation, transfer from any Federal agency, exchange, or otherwise, the land, waters, and other property, and improvements thereon and any interest therein, within the boundaries as described in the Act. Any property or interest therein owned by the Commonwealth of Massachusetts or any of the town comprising the Seashore area may be acquired only with the concurrence of the owner. The Secretary is further authorized to use donated and appropriated funds in making the acquisitions under this Act.

Section 4(b)(1) of the Act suspends the Secretary's authority to acquire improved property by condemnation so long as the towns comprising the Seashore have in force, and applicable to the property, a duly adopted, valid zoning bylaw approved by the Secretary. As defined in Section 4(d) of the Act, "improved property," shall mean a detached, one-family dwelling the construction of which was begun before September 1, 1959..., together with so much of the land on which the dwelling is situated,... as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling.... Section 4(c) provides that authority to acquire commercial property may be suspended for any period when such use is permitted by the Secretary. Section 7(b)(2) of the Act requires that public use areas will be provided only in such places and manner as will not diminish the value and enjoyment of privately-owned "improved property."

National Park Service land acquisition policy (NPS-25, Chapter 1, Page 3) provides that:

"All lands within authorized park area boundaries administered by the other Federal agencies are to be acquired by transfer. Lands owned by State or local government agencies, shall be acquired in accordance with the authority provided by the authorizing legislation. If not prohibited by the authorizing legislation some publicly-owned lands may be purchased with appropriated funds. These are (a) so-called "State School Lands," guidance for which is contained in Senate Report 95-276, (b) land transferred to public ownership after authorization of the area, (c) lands in public ownership because of unpaid taxes or other debt, or (d) land acquired by the public body at the request of the Service for subsequent conveyance for use as Federal parkland." Guidance for the latter three is contained in Senate Report 94-991.

Section 9 of the Act authorized use of appropriated funds not to exceed \$16,000,000 for the acquisition of land and waters and improvements thereon.

Public Law 91-252 (84 Stat. 261), enacted by the 91st Congress on May 14, 1970, amended the Act of August 7, 1961, and provided for an increase in the statutory ceiling to not more than \$33,500,000. Subsequently, an Act of October 31, 1983 (97 Stat. 909) increased the authorization to \$42,917,575.

In addition, the Internal Revenue Code allows certain tax deductions for donation of land or interest in land for approved conservation purposes.

An Act of November 10, 1978, Public Law 95-625 (92 Stat. 3473), Title III, Boundary Changes, authorized addition of approximately 13.00 acres and the deletion of about 16.00 acres from the Seashore, as generally depicted on the map entitled "Cape Cod National Seashore Boundary Map," numbered 609-60,015 and dated February, 1978.

D. Management Plans and Considerations

A Master Plan for Cape Cod National Seashore was approved on October 7, 1970. The basic concepts of this plan remain valid reflecting limited future development needs while protecting significant resource values of the Seashore. Some of the facilities proposed by the Master Plan have not been accomplished as development was contingent upon purchase of additional land, removal of visual intrusions and resolution of visitor access problems. The design load limitation of existing facilities has contributed to the stabilization of visitation at about 5,000,000 yearly visits. A copy of the plan is available for review in the Office of the Superintendent located at Park Headquarters, South Wellfleet, Massachusetts.

The majority of the undeveloped land within Cape Cod National Seashore is federally owned. However, privately-owned, undeveloped land is scattered throughout the Seashore. These parcels are not identifiable as privately-owned by the average park visitor and are subject to trespass problems. Also, it is very difficult for park management to identify these parcels when undertaking routine management and enforcement of Seashore regulations. Continuity of ownership in undeveloped sections is extremely important for effective management of the Seashore's natural, historical, and cultural resources.

III. LAND OWNERSHIP AND USES

A. General description

The total area within the designated boundary of the Seashore is 43,524 acres comprising upland and land under water in the Towns of Provincetown, Truro, Wellfleet, Eastham, Orleans, and Chatham. As of December 31, 1983, 27,139 acres had been acquired by the National Park Service and approximately 4,455 acres of upland and 11,930 acres of tidal lands remained in private, State, other-Federal and town ownership.

1. Private Property

The private property located throughout the Seashore is comprised as follows:

- a. Undeveloped Land. Twenty-five parcels of undeveloped private land comprising 92.43 acres remain in private ownership. These parcels vary in size from 0.10 acre to 30.0 acres. The majority of this land has potential for building additional single-family residences.
- b. Non-exempt Developed Land. This category includes property on which construction of a dwelling was started after the legislative cut-off date of September 1, 1959 and therefore does not qualify for "improved property" status. There are eight parcels in this category containing a total of approximately 21.71 acres of land.
- c. Developed Property. Developed property owners having "improved property" status may remain in residence, freely transfer or sell to others, or offer to sell to the United States. These properties are not subject to acquisition by condemnation so long as the towns have zoning bylaws approved by the Secretary, Section 4(b)(2).

Several "improved properties" contain adequate acreage to subdivide and create additional buildable lots. Section 4(b) provides that "improved property" may retain such land "... as the Secretary shall designate to be reasonably necessary...." There are 18 parcels that contain acreage (in excess of 5.9 acres) adequate to create additional buildable lots through subdivision.

- d. Commercial Property. Section 4(c) of the Act provides that "The Secretary's authority to acquire property by condemnation shall be suspended with respect to any particular property which is used for commercial or industrial purposes during any period when such use is permitted by the Secretary...." Ten commercial uses existing prior to the establishment of the Seashore comprising 12 separate parcels and containing approximately 140 acres remain within the boundary. All commercial properties are periodically reviewed for renewal of the Certificate of Suspension of Commercial and Industrial Property.

2. Public Land

Public land (other than National Park Service land) within the Seashore is comprised of town and State-owned land and land owned by other Federal agencies.

- a. Other Federal Property. The U.S. Coast Guard operates five lighthouses and the U.S. Air Force maintains a radar base within the Seashore boundary. Approximately 147 acres of land are owned by other Federal agencies.
- b. State Land. State-owned lands include submerged lands of (1) the "Great Ponds" within the towns comprising the Seashore and (2) off-shore lands extending one-quarter mile offshore from mean low water of the Atlantic Ocean and Cape Cod Bay. The submerged lands within the towns of Provincetown and Truro were donated by the Commonwealth in 1963, except for 330 acres in Provincetown extending northwest of the Truro town line for a distance of approximately two miles to the easterly property line of the Province Lands area. A total of approximately 11,930 acres of submerged lands remain in this category.
- c. Town Land. A large amount of undeveloped land within the Seashore remains in the ownership of local towns. These parcels vary in size from 0.10 acre to more than 100 acres in size. A total of approximately 2,612.47 acres of land (includes town ways) are included in this category.

B. Compatible and Incompatible Uses of Non-Federal Lands

The Act establishing the Seashore provided for those existing developed properties to remain within the Seashore boundary that satisfied the conditions for "improved property" as defined in Section 4(d) of the Act. Existing commercial uses as permitted by the Secretary will also continue.

Compatible uses of existing private property include use as a single-family dwelling with normal maintenance and upkeep, repairs to comply with sanitation or safety codes, minor modifications, construction of incidental accessory structures and agricultural uses of cleared land. Compatible uses of public property include roads and trails for access by the general public and private property owners, beaches and other recreational uses, utility rights-of-way, parking area, and open space for conservation/preservation purposes.

Incompatible uses of private property include subdivision of land, splits in ownership or sales of portions of private property with the intent to develop or change use, new construction and/or major alteration of residences, timbering, mining, removal of topsoil, establishment of new commercial uses, intensification of existing commercial uses, and activities causing damage to natural resources, scenery or historical resources. Incompatible uses of public land include actions that would adversely affect the environment or the scenic qualities of the Seashore area, introduction of municipal uses that would produce damage to natural or cultural resources, wildlife or scenery, including topographic changes or disruption to natural drainage patterns or would not be compatible with the purposes for which the area was established by Congress.

C. External Influences

Cape Cod, which is Barnstable County, has 380,307 acres or 433 square miles of land and inland water. With a 1980 population of 147,925 and a population density of 338 people per square mile, it has a population density about one-half of the state average of 711. Neighboring Plymouth County has 589 and Bristol County has 825 people per square mile. The population density on the Cape is not alarming, but it has increased at a rate of nearly 50 per cent per decade for the past 30 years. During the past 10 years the state population increased by 0.8 per cent while Plymouth County increased by 22 per cent and Bristol County by 7 per cent. Good planning is needed to protect natural resources and guide development for a rapidly growing population. Population growth is likely to continue at the present rate for at least another decade. (MacDonnell-1984)

Population growth for the Lower Cape area has exceeded the average growth rate for the Commonwealth of Massachusetts over the past decade. Eastham, Wellfleet, Truro and Provincetown experienced a total growth of 69.9, 26.7, 19.5 and 21.4 per cent respectively between 1970 and 1980. This rate of growth has naturally increased the demand for municipal services such as solid waste disposal, septage disposal and potable water. Existing facilities are rapidly becoming inadequate to meet the demand. New sites for these local services are not readily available outside the Seashore. Consequently, considerable pressure is thrust upon the towns to utilize undeveloped, town-owned land within the Seashore to provide relief. A cooperative relationship between the various towns and Seashore management is pursued in an effort to seek solutions to these needs which will be compatible with the purposes for which the Seashore was established.

D. Land Protection Overview

The following is a summary of the history of land protection within the Seashore.

1. Method and Amount of Federal Acquisition (12-31-83)

<u>Method</u>	<u>Acreage</u>	<u>Number of Tracts</u>
Purchase	10,948.31	1,546
Complaint in Condemnation	2,315.53	1,163
Declaration of Taking	2,695.44	204
Donation	10,645.36	39
Exchange	111.88	35
Transfer	22.93	12
Other Federal	146.93	11
Divestiture (exchange)	-76.26	(9)
Total	26,810.12	3,010

Total Acreage

Acreage acquired in Fee Title	26,810.12
Acreage acquired by easement	328.92

Total Federal Acreage Acquired 27,139.04

2. Summary of Retained Uses (12-31-83)

<u>Type of Retained Use</u>	<u>Number</u>	<u>Term</u>
Limited Term Use & Occupancy	70	Remaining Terms Expiring from 1984 to 2005
Life Estate	13	Indefinite

E. Land Protection Program Status

<u>Date</u>	<u>Authorized Ceiling</u>	<u>Appropriations</u>	<u>Unobligated Balance</u>
12-31-83	\$42,917,575	\$42,917,575	0

F. Other Considerations

The Seashore is significantly affected by the surrounding region. It was established in an area containing long-established communities, some of which were organized nearly 300 years ago. The continuance of private land ownership within the Seashore was specifically authorized in the legislation. Consequently, the authorizing legislation contains unusual provisions which are the basis of working relationships between the Seashore and the local and state governments.

The majority of private owners within the towns of Provincetown, Truro, Wellfleet and Eastham, have off-cape addresses (63%). On the other hand, parcels within the towns of Chatham and Orleans are owned primarily by people with on-cape addresses (74%). The high percentage of seasonal residence is consistent with the use/ownership pattern of the past decade.

Public Law 94-565, Payment in Lieu of Taxes, provides for certain payments to be made to local governments by the Secretary based upon the amount of Federal land within the boundaries of the Seashore. The purpose of this Act is to provide compensation to towns which have been affected by decreases in their tax base due to acquisition of land by the Federal government. Two types of payments are included in the Act: one for entitlement lands (\$.75 per acre in perpetuity) and one for acquired lands (1% of the fair market value for each of five years).

IV. PROTECTION ALTERNATIVES

A. Pertinent Federal, State or Local Laws

Cape Cod National Seashore has concurrent jurisdiction over the acquired lands within its boundaries. Title 36 C.F.R. includes certain regulations that provide for the primary protection of resources. The discharge of pollutants into the environment is restricted by the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as amended. Section 404 of the Water Pollution Control Act regulates the discharge of dredged or fill material into navigable waters and adjacent wetlands. Under the Safe Drinking Water Act, 42 U.S.C. § 300 f et deq., the Environmental Protection Agency can restrict federally financed projects that would adversely impact the designated aquifer of Cape Cod as the sole source for domestic water supply. Historic/ archeological values are protected by the Archeological Resources Act of 1979, 16 U.S.C. § 470aa - 470ee and the National Historic Preservation Act, 16 U.S.C. § 470-470w-6.

The Coastal Zone Management Act of 1972, 16 U.S.C. § 1451 et seq., provided a national policy "to preserve, protect, develop, and where possible, to restore or enhance the resource of the Nation's coastal zone...". Section 307 (c) of the Act requires Federal agencies conducting projects or activities directly affecting the coastal zone to carry them out, to the greatest possible degree, in a manner consistent with the approved plan.

The Massachusetts Wetlands Protection Act, Mass. General Laws, Chapter 131, Section 40, applies to all lands, either privately or publicly owned. No person, including private parties and governmental agencies and authorities may fill, remove, dredge or alter a wetland or any area within 100 feet of a wetland.

Under the ancient Colonial Ordinances of 1641 and 1647, Massachusetts citizens have certain rights to privately-owned tidal land between high and low water for fishing, fowling and navigation. Public use of ponds is provided for in the Colonial Ordinance of 1647. Shoreline owners have no proprietary rights over these pond beds or waters.

B. Description of Alternative Protection Methods

The Act establishing the Seashore authorized the Secretary "...to acquire by purchase, gift, condemnation, transfer from any Federal agency, exchange or otherwise, the land, waters, and other property and improvements thereon and any interest therein...". The Act also provided specific constraints on acquisition which are described in Section II.

Several protection alternatives have been considered in arriving at the most appropriate and cost effective means of providing protection for non-federal lands within the Seashore boundaries, including all of the land protection or acquisition methods specifically mentioned in the Act. The alternatives recommended are:

1. Cooperative Agreements. Many types of agreements exist, and they can be molded to the specific circumstances being addressed. Cooperative agreements are administrative arrangements that can provide for:

- access to manage natural or cultural resources
- public access for recreation or interpretation
- law enforcement
- conditions for management of wildlife or other resources

These arrangements may provide interim protection but are inadequate where permanent public access or NPS development is planned.

2. Zoning. A form of land use regulation, zoning provides for control of density, type, location, and character of private development. Massachusetts General Laws, Chapter 40A "The Zoning Act" establishes standardized procedures for the Administration and promulgation of municipal zoning laws.

Local zoning is enacted through the adoption of zoning ordinances. These ordinances consist of text to define various zoning districts specifying the uses permitted in each district, lot sizes, set back from property lines and a map delineating the districts to which the regulations apply. Provisions are made for property owners to seek a use or development variance from the local Board of Appeals.

3. Acquisition of Less-Than-Fee Interest. Property ownership includes a variety of rights which may be envisioned as a "bundle of rights." These rights include, but are not limited to, the right to farm, cut trees, build houses or other structures, extract resources, exclude others from the owned property. In some instances it is not necessary to own all the rights to all land in order to assure its protection and use. Therefore, scenic easements or restrictive easements may be acquired where public and private uses are compatible. Right-of-way easements are also included in this category. This type of easement may provide for public or administrative uses of private property for a specific purpose without acquiring all the rights to the property. Federal acquisition of rights-of-way are generally for roads, trails, and utility corridors needed for park use and development.

Easements can be extremely flexible and can be drafted to fit the specific characteristics of the land as well as concerns of the owner. Less-than-fee acquisition avoids displacement of current residences, allows land to be retained in private ownership and allows local governments to continue to receive tax revenues. A sample easement is included as Appendix C (terms and conditions may be modified in individual cases).

4. Acquisition of Fee Simple Title. Fee simple acquisition is the acquisition of all interest in property. This type of ownership provides for maximum management control and opportunities for public use.

C. Criteria Affecting Application of Protection Alternatives

1. Cooperative agreements are useful when all parties will benefit in some way. Their major drawback is that they most often are subject to change or cancellation on short notice and thus do not provide absolute assurance of long-term protection. Cooperative agreements may be used as an interim protection measure when funds are unavailable for acquisition. Within unit boundaries, agreements are useful for land owned by:
 - State or local governments
 - Private non-profit organizations
 - Other Federal agencies
 - Individuals or corporations who are supportive of unit purposes
2. Zoning can provide regulations that are compatible with Federal management objectives and resources protection needs. Section 5 of the Act provides for the Secretary to issue regulations specifying zoning standards for the Seashore. Standards were promulgated in 1962 by the Secretary and subsequently each of the six towns comprising the Seashore adopted zoning bylaws that were consistent with those standards. However, zoning does not provide permanent protection offered by land ownership. Also, it does not provide for public use and development.
3. Less-than-fee acquisition (easements, development rights, etc.) may be used to ensure that the characteristics of the area remain unchanged while preserving authorized private uses. Negative easements may be used for preventing tree cutting, excavation, grading, residential or other adverse development. Easements may also be acquired to provide for public access, resource management or utility rights-of-way. Less-than-fee acquisition may be useful where:
 - some, but not all private uses are compatible with unit purposes
 - current owners desire to continue ownership but preserve the land under terms set by the National Park Service
 - scenic values need protection but it is not necessary for the National Park Service to own full title.
4. Fee-simple acquisition is generally appropriate where the land:
 - is needed for development of unit facilities or public use
 - must be maintained in a natural condition that precludes reasonable private use
 - requires active National Park Service management to preserve historic and archeological resources, eliminate exotic species, or conduct activities that substantially conflict with private use
 - is owned by individuals who do not wish to sell less-than-fee interests
 - cannot be protected in accord with unit purposes by other methods or alternatives would not be cost-effective
 - is owned by individuals interested in selling fee-simple interest and retaining use and occupancy for a period of time

D. Analysis of Effectiveness of Protection Alternatives

The effectiveness of the various protection alternatives is discussed in terms of the different types of land use. Land use categories include private undeveloped land, tracts with subdivision potential, developed property, non-exempt construction, private way, commercial property, other Federal, State and local government property.

Undeveloped land -- There are 25 privately-owned tracts within the Seashore boundary that are zoned for single-family residential use. These parcels vary in size from 0.10 acre to more than 30 acres.

Protection alternatives.

Agreements have potential for protection of lands whose owners are interested in maintaining the undeveloped characteristics. In general, agreements would be considered an interim form of protection since they are effective only as long as the ownership and the owner's objectives remain unchanged. The cost of this type of protection is minimal.

Zoning bylaws have been approved by the Secretary of Interior for each of the six towns within the Seashore boundary. However, zoning provides minimal protection to visual and environmental amenities of undeveloped lands. The Massachusetts General Laws, chapter 40A, exempts lots containing an area of 5,000 sq. ft. from any increase in area, frontage, width, yard or depth requirements of a revised zoning ordinance.

Less-than-fee acquisition as applied to undeveloped land would require negative restrictions on land--i.e., acquisition of development rights or scenic easements. Advantages to this includes the retention of ownership by a private party with possible savings to the Federal government in acquisition costs and to the National Park Service in terms of land management and law enforcement. Disadvantages include less management control with resulting probabilities of environmental damage, lack of public access, continued trespass problems and the requirement for substantial monitoring of easements by the Seashore staff. Easements to meet protection objectives for these tracts would not leave the owner with any reasonable rights to use the property.

Fee acquisition provides for greater management control. The effectiveness and relative economy of fee vs. less-than-fee is complex due to the small number of parcels remaining in private ownership within the Seashore boundary. These tracts are scattered throughout the Seashore and are generally surrounded by Federal land. Public access, resource management and protection of scenic amenities make fee acquisition necessary. Since the majority of the upland within the Seashore was acquired in fee, the management costs associated with a few additional acres would be negligible.

Tracts with Subdivision Potential -- There are 18 developed tracts that contain adequate acreage to potentially qualify for subdivision (zoning approved by the Secretary requires three acres for new lots within the Seashore).

Protection alternatives.

Agreements, as discussed under undeveloped land, have potential for use. However, agreements would be considered as an interim form of protection. Cost is minimal.

Zoning, as discussed under undeveloped land, provides for use and development. New single-family residential development would be in conflict with the conservation purposes for which the Seashore was established.

Less-than-fee acquisition, as discussed under undeveloped land, would require negative restrictions to be placed on the land. For example, scenic easements or development restrictions would be purchased to prevent building of new dwellings, preserve natural vegetation, etc. Some benefits to this approach would be retention of property on local tax rolls, possible reduced cost to the government compared to fee acquisition. On the negative side, easement monitoring costs would be an important consideration since these parcels are scattered throughout the Seashore where the prevailing Federal ownership is fee. Less-than-fee acquisition of these parcels is preferred as it is the minimum needed for public purposes.

Fee acquisition, as indicated above, is most appropriate where land is needed for administrative facilities or public use. In the present case, these parcels are not needed for development or public use.

Developed Property -- There are 584 developed parcels of private property scattered throughout the Seashore. The majority of these are recognized as "improved property." Guidelines for modifications to "improved property" are included in Appendix B. Compliance with the provisions of the guidelines will assure that replacement structures and alterations or enlargement to existing properties will not jeopardize the eligibility of "improved property" for continuance of a Certificate of Suspension of Condemnation of Improved Property as provided for in P.L. 87-126 or adversely impact Seashore resources.

Improved property is managed in a manner consistent with Seashore objectives. However, construction activity will require monitoring to assure that the zoning standards or guidelines for development are not compromised. Violations of the zoning standards or guidelines for development may require acquisition.

Non-exempt Development -- There are eight improved parcels that do not qualify as "improved property" within the Seashore (constructed after September 1, 1959).

Protection Alternatives.

Agreements would not appear to be a promising protection alternative for non-exempt development since the resource damage can only be corrected through building removal and site restoration.

Zoning would permit the continuation of the development. Although regulations would control the impacts of additional development to some degree, these developments intrude on otherwise natural areas that are managed for preservation purposes.

Less-than-fee acquisition would not restore the loss of natural vegetation or correct other adverse impacts to the sites.

Fee acquisition of these tracts would give the National Park Service management control over these areas permitting the removal of developments and site restoration, protection of esthetic and ecological values, and public access.

Commercial Property -- There are 10 commercial properties within the Seashore boundary. These commercial uses are managed in a manner consistent with Seashore objectives. However, commercial activities will require monitoring to assure that the zoning standards for the Seashore are not compromised.

E. Assessment of Impacts

Many of the social and cultural impacts of the various alternatives as well as the economic impacts have been discussed in the analysis of individual protection alternatives. This section will discuss those impacts as they relate to the overall protection plan.

1. **Social and Cultural Impacts.** Both the social and cultural impacts from the land protection program are going to be very minor. The establishment of Cape Cod National Seashore caused inevitable social and cultural impacts to the six towns comprising the Seashore; however, the current plan is a relatively minor increment in the overall impact. In this plan, land protection alternatives are under consideration for a total of 56 parcels containing 261 acres of land. Most of the tracts considered in this plan are small, undeveloped, and currently unused parcels or are portions of larger tracts containing acreage in excess of that reasonably necessary for the enjoyment of the dwelling as designated by the Secretary. The eight non-exempt properties that were constructed after September 1, 1959, are seasonal cottages. Impact on property owners will be minor as the acquisition would not displace any year-round occupant. Five cottages meeting the definition of "improved property" would be acquired in fee with a use and occupancy encumbrance -- i.e., three (first priority for acquisition) are needed for National Park Service development and visitor use and two (fourth priority) are visual intrusions that would be acquired for removal to enhance the esthetics of the Nauset marsh area.
2. **Economic Impacts.** The local economy will be only marginally impacted by the protection program; regardless of the alternatives selected "improved property" will remain within the Seashore. Commercial operations will be permitted to continue at their present level of activity with no consequent economic impact. Acquisition of undeveloped lots would prevent construction of additional residential units within the Seashore.

Public Law 91-646, the Uniform Relocation Assistance and Real Property Policy Act of 1970, entitles landowners, tenants and others to certain payments if they are displaced by Federal acquisition. The entitlements include housing differential, moving expense, and other incidental expenses involved in selling a property and/or in relocating.

The protection plan would reduce slightly the amount of land and property on the tax rolls of the local towns. However, the economic impact would be slight on any one town and would be offset somewhat by payments under Public Law 94-565 (\$.75 per acre annually on a long-term basis).

V. Recommendations

This section describes the rationale for the protection methods selected for the private and public lands within the Seashore. Priorities listed below are based on current conditions. Adjustments may need to be made in response to owner hardship or imminent danger of adverse impact to Seashore resources. Prompt consideration will be given to offers to sell based on owner hardship regardless of priority. Lands that become threatened by development or resource damage will require prompt protection under available authorities, or acquisition outside the established priority. The listings within each priority are in chronological order by tract number, not in priority order. Any purchase of land or interest in land is dependent upon the availability of funds.

A. Priorities for Protection

The priorities for land protection action are first, tracts needed for park development or use; second, subdividable land; third, undeveloped land; fourth, all other lands. A detailed listing of the tracts and the recommended priority for protection action is included in Table 1. Land ownership segment maps are available at Park Headquarters and at the North Atlantic Regional Office, Boston, MA.

B. Protection Methods

The selection of protection methods follows from the analysis of alternatives. Protection methods are also presented for each tract of land in Table 1. The protection method chosen represents the optimum long-term solution. It may be necessary to consider interim protection measures if funds for purchase of easements or fee interest are not available.

Undeveloped Land -- There are 25 tracts of privately-owned undeveloped land comprising approximately 92 acres within the Seashore boundary. One large 33.4 acre tract owned by the Audubon Society does not require the purchase of any estate because management of the area is compatible with Seashore objectives. Also, the large 30 acre tract owned by the Hanna Trust does not require the purchase of any estate since the tract is a small island located in Nauset Harbor and is protected by zoning and wetland restrictions. Less-than-fee acquisition is recommended for 10 tracts to assure that existing uses will be continued and that scenic and environmental values will be protected. The remaining 13 tracts are recommended for fee acquisition to 1) prevent development, 2) protect esthetic and ecological values, and 3) permit visitor use.

Non-exempt Property -- Eight single-family cottages are non-exempt from acquisition by condemnation since they were constructed after September 1, 1959. Five of these properties were previously scheduled for fee acquisition but inadequate funding prevented acquisition. Three structures recently identified as non-exempt properties as a result of the review undertaken to determine the eligibility for a Certificate of Suspension of Condemnation of Improved Property are recommended for acquisition in fee for the reasons outlined below.

One small cottage located in a visually prominent location at High Head must be removed to restore the visual quality of the area through restoration of natural conditions. Three cottages constructed adjacent to a pond are contributing to potential water quality degradation and two additional cottages intruding into a large undeveloped natural wildlife habitat area are recommended for removal and site restoration. One cottage located within a wetland area restricting natural resource management (water level manipulation) is recommended for removal and site restoration. Also, one parcel consisting of a trailer and several small cottage units in the vicinity of the proposed Highland Light developed area is recommended for removal and site restoration. Fee acquisition to accommodate removal of physical development and site restoration is proposed for all eight non-exempt properties.

"Improved Property" -- Three residential units located within the Highland Light developed area in Truro must be acquired in fee to permit removal and landscape restoration. These structures are an intrusion on the historic scene of the Highland golf course (laid out in 1892), which has been nominated to the National Register of Historic Places. Acquisition for removal of these structures was approved in the Highland Light Development Concept Plan on August 26, 1970. Two additional residential parcels located adjacent to Nauset Bay in Eastham should be acquired in fee. These structures occupy prominent locations on the cliff overlooking Nauset Marsh and Coast Guard Beach and as such detract from the scenic quality of the area.

Subdividable Land -- There are 18 "improved properties" containing acreage in excess of that determined necessary by the Secretary. The development rights should be acquired to prevent subdivision and further development of new residential units. Less-than-fee acquisition would provide adequate protection for these parcels from new development and loss of scenic and ecological values.

Commercial Property -- The Secretary has determined that existing commercial developments, located within the Seashore boundary, are providing services necessary for the visiting public. These commercial operations include food service, lodging, camping, cottages, and automobile service. The authority to acquire these commercial properties by condemnation has been suspended for the reason that continuance of such property in private ownership is deemed by the Secretary to be not inconsistent with present plans for the administration and development of the Seashore. Any changes in use would be reviewed by the Cape Cod National Seashore Advisory Commission and a decision on the need to acquire would be made at that time.

C. Acquisition Methods

The primary means of providing land protection will be by purchase, donation, exchange and the exercise of eminent domain. This plan proposes acquisition of fee and less-than-fee (easement) interests. Every effort will be made to reach an agreement on the purchase price with the owner where lands or interests in lands are to be acquired by direct purchase. However, if an agreement cannot be reached, a complaint in condemnation may be filed in the Federal Court for establishment of the fair market value of the property. In addition, condemnation action may be utilized to overcome defects in titles or prevent imminent destruction of resources.

Donation and bargain sales will be encouraged as a method of acquiring land or interests in land.

It is not anticipated that the exchange authority will be utilized to any great extent within the Seashore. However, this method of acquisition will be used with the towns comprising the Seashore as necessary. The use of the exchange authority to relocate private property from hazardous and/or eroding areas to other areas within the Seashore is not compatible with the intent of the enabling legislation and is not considered beneficial to the United States.

The following three conditions must be met before the Secretary may enter into any exchange:

- the properties must be approximately equal in fair market values;
- there must be Seashore property which the Secretary is willing to exchange or other Federal disposable property which is located in the same state as the non-Federal property to be acquired; and
- the Secretary must deem the property being acquired more important for the Seashore than that being exchanged.

D. Land Adequately Protected Under Existing Ownership

The Act, Section 2(a), provides that any property, or interest therein, owned by the Commonwealth of Massachusetts, by any of the six towns comprising the Seashore or by any other political subdivision of the Commonwealth may be acquired only with the concurrence of such owner. Also, any Federal property located within such area may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary.

1. Federal. Approximately 147 acres of land are under the jurisdiction and management of the U.S. Coast Guard and Department of Defense within the Seashore boundary. This property is comprised of five lighthouses and the Truro Air Force Base. These parcels are managed in a manner consistent with Seashore objectives.
2. State. Approximately 11,930 acres of tidal lands within the Seashore boundary are under the jurisdiction and management of the Commonwealth. This area consists primarily of submerged lands extending to the Seashore boundary up to one-quarter of a mile into the Atlantic Ocean and Cape Cod Bay. This land is managed in a manner consistent with Seashore objectives.
3. Town Land. Approximately 2,612 acres of land within the Seashore boundary are under the jurisdiction and management of local towns (Provincetown, Truro, Wellfleet, Eastham, Orleans and Chatham). This property consists of beach facilities, roads and unimproved tracts. It is anticipated that this property will remain in town ownership with the exception of those parcels which may become the subject of exchange negotiations to accommodate development of visitor use facilities. All town-owned land is currently managed in a manner consistent with Seashore objectives.

All towns comprising the Seashore area have adopted zoning approved by the Secretary of Interior and therefore, have provided for the protection of certain private property from condemnation.

1. Private Ways. There are 36 tracts within the Seashore boundary that are designated as private ways providing access to developed property. This land is managed in a manner consistent with Seashore objectives.
2. Private Developed Property. Approximately 1,115 acres comprised of some 584 tracts of privately-owned property exists within the Seashore boundary. Local zoning provides use that is consistent with the zoning standards approved by the Secretary of Interior and with the purposes for which the Seashore was established by Congress. Guidelines for modifications to developed property eligible for "improved property" status are included in Appendix B.

Use of land currently considered adequately protected may change. If such changes in use would adversely impact the purposes of the Seashore, all available authorities will be considered. The Service may acquire and pay just compensation for any tract where a proposed change in use or development, variance from zoning bylaws, or other use incompatible with resource preservation and/or contrary to legislative intent. Acquisition will be dependent upon availability of funds. The determination of the interest to be acquired in the tracts listed above would be made at the time of acquisition based upon the reason for purchase.

TABLE 1

TRACT LISTING AND METHOD OF ACQUISITION BY PRIORITY

TRACT NO.	OWNERSHIP	LOCATION	ACREAGE	ESTATE	METHOD
<u>1st Priority</u> - Property Needed for Development					
16-2541	Slade, Thomas	Truro	0.20	Fee	Purchase
16-2542	Travaglani, Eugene	Truro	0.20	"	"
16-2528	Towle, Thomas	Truro	0.20	"	"
		Sub-Total	0.60 Acres		
<u>2nd Priority</u> - Subdividable Land					
				* Easement/ Fee	Purchase/ Donation
14-3447	Falk, Lee	Truro	3.40	"	"
14-3565	Powers, Richard	Truro	4.00	"	"
14-8682	Kahn, Harry	Truro	7.00	"	"
19-5142	Wild, Peter	Wellfleet	3.30	"	"
19-5143	Marsh, Margaret	Wellfleet	3.65	"	"
19-8589	Eldredge, Elizabeth	Wellfleet	3.40	"	"
20-4228	Lifton, Robert	Wellfleet	3.50	"	"
22-5316	Dickinson, Richard	Wellfleet	3.00	"	"
23-8664	Cook Family Trust	Wellfleet	24.00	"	"
25-5768	Draz, Griswold	Wellfleet	4.68	"	"
25-8569	Hurwitz, Sidney	Wellfleet	4.60	"	"
25-4055	Columbia University	Wellfleet	3.20	"	"
25-4070	Biddle, Edmund	Wellfleet	4.23	"	"
25-8686	Levin, Harry	Wellfleet	3.00	"	"
25-4050	Brown, Elaine	Wellfleet	4.50	"	"
33-6919	Guild, Bayard	Eastham	6.10	"	"
35-8605	McKusker, Henry	Eastham	8.50	"	"
38-7202	Pochet Island Trust	Orleans	50.84	"	"
		Sub-Total	144.90 Acres		
<u>3rd Priority</u> - Undeveloped Land					
				* Easement/ Fee	Purchase/ Donation
10-1057	Curtin, Junia	Truro	0.50	"	"
11-3201	Bessay, Grace	Truro	0.10	"	"
11-3206	Bessay, Grace	Truro	0.10	"	"
17-8614	Aiken, Richard	Truro	0.97	"	"
17-8615	Aiken, William	Truro	2.31	"	"
19-5120	Watts, Peter	Wellfleet	1.70	"	"
23-8680	Payne	Wellfleet	0.08	"	"
34-6481	McDonald, Martin	Eastham	0.37	"	"
35-6516	Dill, Thomas	Eastham	0.50	"	"
35-6519	Eaton, Ralph	Eastham	0.32	"	"
37-7113	Owen, Alien	Orleans	0.45	"	"
37-7115	Burton, Barbara	Orleans	1.21	"	"
38-7201	Pochet Property Owners Assn.	Orleans	14.90	"	"
41-8124	Small, Carlton	Chatham	0.48	"	"
11-8689	Bessay, Grace	Truro	0.17	Fee	"
15-2392	Lucas, Edward	Truro	1.00	"	"
16-2585	Lower Cape Realty	Truro	1.40	"	"
19-5047	Commonwealth Electric	Wellfleet	0.15	"	"
21-4821	McFall, Edna	Wellfleet	0.13	"	"

TABLE 1 (Cont'd)

TRACT NO.	OWNERSHIP	LOCATION	ACREAGE	ESTATE	METHOD
3rd Priority - Undeveloped Land (cont'd)					
22-4569	Start, Patricia	Wellfleet	0.39	Fee	Purchase/Donation
22-8640	Bell, Richmond	Wellfleet	0.60	"	"
25-4068	Probststein, Ronald	Wellfleet	1.00	"	"
31-6736	Roach, M. F. & J.	Eastham	0.20	"	"
36-6601	Mass. Audubon Society	Eastham	33.40	None	Coop. Agreement
36-7000	Hanna Trust	Orleans	<u>30.00</u>	"	"
		Sub-Total	92.43 Acres		
4th Priority - All Other					
11-2242	Dickinson, Ernest	Truro	0.63	Fee	Purchase
15-2313	David, James	Truro	7.28	"	"
18-8721	Yasumura, Cecilia	Truro	1.80	"	"
19-8572	White, Arthur	Truro	3.00	"	"
19-8579	Zwirner, Ursula	Truro	3.00	"	"
19-8606	Rosarius, Charles	Truro	1.90	"	"
22-4553	Eyges, Leonard	Wellfleet	2.30	"	"
26-4654	Fiel, Gerald	Wellfleet	1.80	"	"
34-6427	Deane, Charles	Eastham	0.70	"	"
34-6428	Younger, Paul	Eastham	<u>0.80</u>	"	"
		Sub-Total	23.21		
		Grand Total	261.14		

* The estate indicated (Easement Fee) is the minimum interest necessary to fulfill park purposes as identified at the time of Plan preparation. The interest actually acquired may differ depending upon topographic configuration, management feasibility, and lowest cost to the government.

ENVIRONMENTAL ASSESSMENT OF THE LAND PROTECTION PLAN
FOR CAPE COD NATIONAL SEASHORE

I. Purpose and Need

There are 56 tracts containing 261 acres of private property within the authorized boundary of Cape Cod National Seashore that are proposed for acquisition/protection measures. These parcels vary considerably in size and, based on location and development potential, in significance to the realization of the management objectives for the Seashore. A land protection plan is necessary to assure that these parcels are protected from uses that are incompatible with the management of the area. A wide range of alternative methods for land protection is evaluated by the plan, which recommends those methods that are considered to be most effective, efficient, and economical. Also, the plan recommends priorities for land protection action.

II. Discussion of Alternatives

A. Cooperative Agreements. Agreements are legal instruments defining administrative arrangements between two or more parties. An agreement will allow the landowner to retain ownership of the land but will restrict uses of the land. The agreement will provide for protection of the resource and perpetuation of existing management minimizing the socio-economic impact.

B. Land Use Regulation. Zoning, which is a form of land use regulation, is in effect and should continue to give some level of protection to environmental and esthetic values. Zoning does not prohibit development but provides control over density, type, location, and character of private development. Any additional development would impact the environment by reducing the vegetated area, and ground water supply, increasing sewage loads and soil erosion, and possibly impacting rare or endangered plant habitat. The socio-economic impacts would embrace a decrease in open space and an increase in the tax base and population.

C. Less-Than-Fee Acquisition. This method will include easements, and development rights acquisition. Less-than-fee acquisition will protect the resources from degradation and will perpetuate existing management. This acquisition will provide for the protection of the resources and perpetuation of existing management minimizing the socio-economic impact.

D. Fee Acquisition. Fee acquisition involves the acquisition of all interests in the property. This alternative would have a positive impact on the resource by providing maximum protection for resources over the long-term. This alternative would remove the land from the tax base but the economic impact would be softened through the in-lieu-of taxes payment.

III. Selection of Alternative

Refer to the Analysis of Effectiveness of Protection Alternatives and Recommendations section for a discussion of the selected alternative for each land use category and a further discussion of these alternatives.

IV. Agencies and Individuals Consulted

A notice of intent to prepare a Land Protection Plan for Cape Cod National Seashore was released on November 2, 1983. More than 800 notices were mailed to all known landowners in the Seashore, local and regional news media, and other interested individuals. An open meeting to discuss land protection concerns, alternatives for land protection, and priorities for implementation was held on November 18, 1983. A follow-up meeting was held on June 8, 1985 to discuss the Draft Land Protection Plan. Public comment period from May 10 through June 24, 1985 was announced in the Federal Register Vol. 50, No. 91, Friday, May 10, 1985.

Conclusion: This action will have no significant effect on the quality of the human environment and does not involve unresolved conflicts of alternative resources. It, therefore, is considered a categorical exclusion from the NEPA process, 516 DM 6, Appendix 7, 7.4B(11); Plans, studies and reports.

A notice of no direct effect to the coastal zone was filed with the Massachusetts CZM on May 20, 1985. CZM agreed to the determination of no direct effect on July 15, 1985.

USE GUIDELINES
FOR
PRIVATE PROPERTY

In administering, preserving, and developing the Cape Cod National Seashore (hereinafter referred to as Seashore), the Secretary of the Interior (hereinafter referred to as the Secretary), is required to be guided by the provisions of the Act of August 7, 1961, 16 U.S.C. § 2459 b. et seq., (75 Stat. 284), and applicable provisions of the laws relating to the National Park System. The Secretary, further, may utilize other statutory authority available to him for the conservation and management of natural resources as he deems appropriate to carry out purposes of the said Act.

The Secretary may not acquire without the consent of the owner any "improved property" or interests therein within the boundaries of the Seashore so long as the towns comprising the Seashore shall have in force and applicable to such property a duly adopted, valid zoning ordinance that is approved by the Secretary. The Secretary is authorized to withdraw the suspension of his authority to acquire by Condemnation, "improved property" that is made the subject of a variance or exception which, in his opinion fails to conform or is in any manner opposed to or inconsistent with preservation and development of the Seashore as contemplated in the said Act. Regulations adopted by the Secretary are consistent with the objectives and purposes of the Act so that the scenic, scientific and cultural values of the area will be protected, undeveloped areas will be preserved in a natural condition, and the distinctive Cape Cod character of the existing residential structures will be maintained. (Title 36, Code of Federal Regulations, Chapter 1, Part 27 - Cape Cod National Seashore; Zoning Standards.)

Whenever used in these guidelines, the following terms shall have the following meanings ascribed to them:

Accessory Building or use - A building or use customarily incidental to and located on the same lot with the principal building or use, except that it shall no longer be considered accessory when it is contained within the primary structure and represents more than 30% of the floor area; or 50% of the floor area, where the accessory use is contained in a detached structure. Detached accessory structures will include shelters, garages, boathouses, wellhouses, sheds, barns and outhouses. A structure used as a studio, office, or for appropriate small scale home occupations, may be considered an accessory structure.

Cottage Colony - A group of detached structures traditionally used as guest houses and rented to visitors forming a part of a colony centered around an improved property in existence prior to September 1, 1959.

Detached, one-family dwelling - A structure, ordinarily thought of as a house, usually consisting of a central living, dining, and single cooking area with adjacent sleeping quarters so that the occupants live as a single housekeeping unit.

Expansion Limitation - Expansion is limited to 50 per cent increase of the liveable area as it existed on September 1, 1959.

Floor Area, Liveable - The sum of the gross horizontal area of the floors of a dwelling used or intended to be used for living, sleeping, cooking or eating purposes excluding roofed porches, roofed terraces, cellar and basement areas as it existed on September 1, 1959.

"Improved Property" - A detached, one-family dwelling, the construction of which was begun before September 1, 1959, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of non-commercial residential use, together with any structure accessory to the dwellings which are situated on the land so designated.

The eligibility for a Certificate of Suspension of Condemnation of Improved Property may be jeopardized if existing properties are used in such a manner as determined to be inconsistent with the purposes of the Act.

The following are examples of compatible activities:

Normal maintenance and upkeep of private property with similar materials; repairs and reconstruction to comply with safety, building or sanitation codes; minor modifications to existing structures and outbuildings; replacement of roofing or siding; shoring up structures threatened by subsidence of soil; repair or replacement of utility lines.

The following are examples of incompatible activities:

1. Subdivision, including splits in ownership or sell off of portions of the land; timbering, initiation of new uses affecting park resources, or intensification of current uses which may be detrimental to the Sea-shore purposes.

2. Alterations to existing structures or new construction having one or more of these characteristics:

New separate residences or new residences physically linked to the existing structure.

Replacement of a major structure with one that is larger than its predecessor by more than 50%.

Impairment of historical integrity of an identified historic structure.

3. Expansion of existing uses to a point where they cause damage to the scenic, cultural or natural resources of the area.

4. Conversion of non-commercial property to commercial uses.

5. Damage to natural, scientific, or cultural resources including topographic changes or disruptions of natural drainage patterns, or disturbance of natural vegetation or wildlife.

6. Creation of hazards that endanger the safety of park visitors.
7. Major increase in commercial use or traffic at access or crossing points on interior park roads which could result in hazardous conditions that may endanger the safety of park visitors.

Conditions that may affect the eligibility of a developed property for a Certificate of Suspension of Condemnation follow:

Alteration of Existing Structure(s)

1. Any reconstruction, alteration, or enlargement of an existing detached, one-family dwelling that would result in less than a 50-foot setback from all streets measured at right angle with the street line or a 25-foot distance from the abutter's property lines (or less than such lesser setback or distance requirements already in existence for such dwelling) or that would result in an increase of more than 50 per cent of the existing livable area of the dwelling shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by the owner.

2. Any conversion, reconstruction, alteration, or enlargement of an existing accessory structure that would result in the use of such structure for residential purposes will create an additional one-family dwelling and shall be the basis for terminating the status of the entire property as improved property. However, guest houses included in a cottage colony which were constructed prior to September 1, 1959, are consistent with the definition of improved property.

Moving of Existing Structure(s)

1. If an existing detached, one-family dwelling is moved to another site on the same tract and its new location results in less than 50-foot setback from all streets measured at a right angle with the street line or a 25-foot distance from the abutter's property lines, such action shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by the owner.

2. If, in the process of moving an existing residential building to another site on the same tract, any reconstruction, alteration or enlargement is undertaken that would result in less than a 50-foot setback from all streets measured at a right angle with the street line or a 25-foot distance from the abutter's property lines or that would result in an increase of more than 50 per cent of the existing livable area of the dwelling, such action shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by owner.

Destruction of Structure(s) and Construction of New Structure(s)

1. If a detached, one-family dwelling is deliberately razed, destroyed or abandoned (other than by causes beyond the control of the owner

such as a fire, windstorm, or ocean overwash) and a replacement dwelling is constructed, either on the same site or on the same tract, such action shall be the basis for terminating the status of the property as improved property.

2. If a detached, one-family dwelling is destroyed by causes beyond the control of the owner, such as windstorm or ocean overwash, and a replacement dwelling is constructed, either on the same site or another site on the same tract that would result in less than a 50-foot setback from all streets measured at a right angle with the street line or a 25-foot distance from the abutter's property lines or that would result in an increase of more than 50 per cent of the previously enclosed livable area of the former dwelling, such action shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by the owner.

3. If a detached single-family residence is determined to be in sound structural condition and is rebuilt, such action shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by the owner.

Expansion Determination

The base for determining the limits for allowable expansion to existing dwellings is the livable area of the single-family residence that existed as of September 1, 1959. Any increase in livable area constructed since September 1, 1959 will be deducted from the apportioned livable area to determine the remaining area for expansion.

Construction of Accessory Structure(s)

The construction of any new accessory structure that would result in the use of such structure for residential purposes will create an additional one-family residential dwelling and shall be the basis for terminating the status of the entire property as improved property. The total floor area for all accessory structures attached or detached, shall not exceed 50 per cent of the enclosed livable area of the single-family residence.

Commercial and Industrial Property

The Act requires that no permits for commercial or industrial uses be issued without the advice of the Cape Cod National Seashore Advisory Commission. Part III (1), Commercial Properties, outlines the guidelines relating to the acquisition or continuation of these properties within the Seashore. The Certificate of Suspension of Condemnation for commercial and industrial property is valid for a prescribed term which is usually five years. Longer terms up to 10 years may be established to provide for the return of capital on large investments which are recommended by the Seashore Advisory Commission as an expansion of nonconforming use within the Seashore.

Hardship

All of the three following conditions must be met to establish substantial hardship:

1. Literal enforcement of the guidelines would involve substantial financial or other loss to the owner.
2. The circumstance is caused by peculiar soil conditions, shape of topography of such land or structural deterioration.
3. Desirable relief may be granted without either
 - a. substantial detriment to the general public.
 - b. nullifying or substantially derogating the purposes and intent for which Cape Cod National Seashore was established.

DEED

WITNESSETH:

C-1

and agreed and expressed that the doing and the refraining from said acts, and each thereof, upon said property is and will be for the benefit of the Grantee through the preservation of the scenic and other natural values of Cape Cod National Seashore, and will preserve the surrounding area in its natural state.

THE RESTRICTIONS HEREBY imposed upon the use of said property and the acts which the Grantors so covenant to do and refrain from doing upon said property in connection wherewith are and shall be as follows:

1. The premises shall be used and shall remain in their natural condition;
2. No building, road, sign, billboard, or other advertising display, mobile home, utility pole, tower, conduit or line or any other temporary or permanent structure will be constructed, placed or permitted to be placed on the premises;
3. No residential, commercial, industrial or mining activities or other similar acts or uses detrimental to or inconsistent with the natural preservation of the Cape Cod National Seashore shall be conducted on the premises;
4. Except for customary drainage ditching activities relating to mosquito and other insect control, no soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit shall be excavated, dredged or removed from the premises; and no soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other substance or material whatsoever shall be placed, filled, stored, or dumped thereon. Spraying of pesticides shall be in accordance with approved, integrated pest management plans (IPM);
5. No trees, grasses or other vegetation shall be cut, removed, or otherwise destroyed, except for (a) the mowing or harvesting of hay (b) ditching activities, and (c) clearing of shrubbery, trees and other vegetation for the purposes of beautification and maintenance of vistas, and control of poison ivy along trails.
6. No raw sewage or waste products shall be discharged from the premises into any salt or fresh surface or ground waters located in or about the above described premises that will adversely affect the purity of said waters;
7. No outdoor burning, burying or scattering of litter shall be permitted on the premises. This shall not be construed as affecting fires for cooking between high and low water marks;

8. No use of any type of model aircraft, rocket, fireworks, or other similar devices on the premises is permitted;

9. This instrument does not grant the public or any other person any right of ingress or egress in, over or across the property covered herein or any other rights of usage therein, except the grantee, and as to the grantee only in accord with paragraph 11 hereof;

10. Vehicle parking shall be limited to roads, driveways, and parking areas. Abandonment of any vehicle or other personal property is prohibited.

11. The Superintendent or designee, Cape Cod National Seashore, shall be permitted at reasonable times, upon prior notice to the grantor, their successors or assigns, to come upon the premises in order to inspect for violations of any of the covenants of this deed; and

12. The grantor, their successors, heirs and assigns, may use the land in a manner not inconsistent with the terms and conditions of this deed.

The following uses shall not be prohibited by this Restriction-Easement nor considered inconsistent with the intent of this grant;

1. The construction and maintenance of walkways and fences;
2. Fishing, hunting, boating, horseback riding and walking;
3. The clearing, maintenance and use of existing trails and unpaved roadways.
4. The posting and maintenance of signs provided that they do not exceed twelve inches in length or twelve inches in width, such as "Private Property," "No Trespassing" and the grantors' name or that of their successors.

The foregoing Conservation Restriction-Easement is authorized by Massachusetts General Laws, Chapter 184, Sections 31 through 33, and otherwise by law, and is intended to ensure that the premises will be retained in their natural, scenic and open condition for conservation purposes and for the protection of natural environmental systems.

Nothing herein shall impose upon the grantee any duty to maintain or require that the premises be maintained in any particular state or condition, notwithstanding the grantees' acceptance hereof.

The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the grantees for enforcement of this Conservation Restriction-Easement.

TO HAVE AND TO HOLD, the above granted right and easement unto the grantee and its assigns forever.

The estate and interest herein acquired is for the National Park Service, U.S. Department of Interior.

IN WITNESS WHEREOF, the said Grantors have caused this deed to be executed on the day and year first above written.
